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Supreme Court, U.S.
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No. 870

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

[redacted]

Petitioner,

v.

[redacted]

Respondent.

PETITION FOR A WRIT OF CERTIORARI

BRIEF FOR THE AMERICAN INSURANCE ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 370

THE BALTIMORE AND OHIO RAILROAD COMPANY, PETITIONER

v.

DANIEL T. JACKSON, RESPONDENT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 42 of the Revised Rules of the Court, the Interstate Commerce Commission, as amicus curiae, submits this brief in support of the petition for writ of certiorari.

The opinion of the Court of Appeals, as well as other pertinent data, including a photograph of vehicles similar to the ones involved in this case, are reproduced in the appendix to the petition. Particular attention is invited to the photograph (App. 17).

The lower court held that a motor track car and a push truck attached to the car were both subject to the provisions of the Safety Appliance Act. More specifically, the court held that the motor car is a locomotive, the push truck is a car, and the two combined are a train within the meaning of that Act.

Vehicles subject to that Act must be equipped with such devices as power driving-wheel brakes, a train brake system, automatic couplers, draw bars, sill steps, grab irons and hand holds, and hand brakes, and the Commission must promulgate the standards; namely, the number, dimensions, location and manner of application of many of those devices. 45 U. S. C. 1, 2, 4, 5, 11, and 12.

The lower court's interpretation is contrary to the understanding of this Commission, as well as that of the railroads, for over 63 years as is indicated by the fact that the thousands upon thousands of these small service vehicles, all in general use in one form or another when the legislation was enacted, have never been so equipped; the Commission has never prescribed standards for any appliances to be used thereon; and, although the Commission is charged with the duty of enforcing the Act, it has never inspected these vehicles, or issued any regulations pertaining to them, or taken any step leading to the institution of enforcement proceedings in the courts against any railroad for using these vehicles not equipped with the devices specified in the Safety Appliance Act. Also significant is the fact that there is no indication in the record nor, so far as we know, in any other source, that the railroad labor leaders, who have always been properly solicitous for the welfare and safety of their members, ever registered any objection to the fact that these vehicles were not treated as within the scope of the Safety Appliance Act.

The Commission and the railroad labor organizations played important roles in the shaping of the legislation commonly referred to as the Safety Appliance Act. I Sharfman, *The Interstate Commerce Commission,* p. 245, et seq. Their continued understanding as to its coverage should be accorded great weight. While the Safety Appliance Act should be construed in the light of its humane purposes, it is still true that railway safety legislation consists of a series of specific statutory requirements, rather than a grant of broad and flexible safety powers to the Commission, as in Section 204 (a) (1) and (2) of the Interstate Commerce Act applicable to motor carriers. In this statutory context, the Commission has been unwilling to assert a coverage of the Safety Appliance Act which is opposed to long-standing official and industry understanding, and which might create more practical problems than it would solve.

There can be no doubt that the question is substantial. As the petition points out (pp. 3 and 5), there are more than 60,000 motor track cars and many more push trucks in use on American railroads today. None of these vehicles is equipped with the devices specified in the Safety Appliance Act. To so equip them would cost millions of dollars. Moreover, it has never been demonstrated that it is physically possible to load these vehicles with all of those devices. So equipped, they would be too heavy to be lifted from the tracks by a few men and thus would be unusable. In brief, application of the Safety Appliance Act to these small service vehicles will create serious practical problems for the railroads in the

maintenance and inspection of their right of way and signal systems.

The question presented is of considerable importance to the Commission in its administration and enforcement of the Safety Appliance Act. It is of great practical importance to the railroads of this country. The petition for certiorari should be granted.

Respectfully submitted,

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